

Certified in Orthopedic Surgery, presented his report to defendant. He concluded that, based on the medical records provided, plaintiff had a mild impairment. The MRI objective findings were consistent with her age and did not show any evidence radiologically of a neurological deficit. Thus, he found plaintiff capable of gainful employment. He recognized that she was suffering from back pain, but found that there was a lack of evidence to support a finding of disability.

36. In his opinion, based on the medical records, the work-related activities plaintiff would need to avoid were repetitive bending and stooping, lifting, and climbing ladders or working at unprotected or unrestricted heights or around moving machinery. He also noted that from an orthopedic perspective, plaintiff could sit, stand and walk, for a total of 5-7 hours per 8-hour work day and could continuously engage in each of these activities for 2-4 hours per 8-hour work day. He also noted that plaintiff could carry 20 pounds maximum and frequently lift up to 10 pounds in an 8-hour work day.

37. On October 1, 1999, Dr. Robert Kaplinsky, Board Certified in Urology, presented his report to defendant. He concluded that, from a urology perspective, there was no objective data to suggest that plaintiff could not perform any of her stated duties. He added that the medical documentation did not support an impairment of such severity that would prevent plaintiff from functioning at any gainful employment.

38. From a urologic perspective, Dr. Kaplinsky noted that Plaintiff could sit, stand and walk, for a total of six hours per 8-hour work day and could continuously

engage in each of these activities for two hours per 8-hour work day. He also noted that plaintiff could carry 20 pounds maximum and frequently lift up to 10 pounds in an 8-hour work day.

39. On October 3, 2002, MetLife wrote a letter to plaintiff explaining that it had reviewed her claim file and that it had determined that the medical evidence did not support a finding of disability, which would preclude her from engaging in any type of work as defined by the Plan. Defendant detailed in the letter the conclusions of both Dr. Silver and Dr. Kaplinsky. Defendant also addressed plaintiff's award of social security benefits and explained how the awarding of those benefits did not guarantee the approval of long term disability benefits under the Plan as plaintiff was required to submit medical evidence substantiating the existence of a totally disabling condition as defined in the Plan. Accordingly, defendant informed plaintiff that it was affirming its original determination that she was not eligible for benefits.

III.

CONCLUSIONS OF LAW

1. The Plan is an employer-sponsored welfare benefit plan governed by ERISA.
2. The Court has jurisdiction over plaintiff's claims.
3. A denial of ERISA-regulated plan benefits is reviewable under the abuse of discretion standard if the plan accords the claims administrator "discretionary authority to determine eligibility for benefits or to construe the terms of the plan." *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115, 109 S. Ct. 948,

103 L.Ed.2d 80 (1989).

4. In order for the abuse of discretion standard to apply to the claims administrator's decision, the governing documents must demonstrate that the administrator "unambiguously retained" discretion to determine eligibility for benefits. *Kearney v. Standard Ins. Co.*, 175 F.3d 1084, 1090 (9th Cir. 1999).

5. Defendant upheld its original decision to deny plaintiff's claim for benefits on October 3, 2002; the version of the Plan effective July 1, 2002 is the Plan applicable to the Court's review of this matter. *Bolton v. Construction Laborers' Pension Trust for So. Cal.*, 56 F.3d 1055, 1058 (9th Cir. 1995) (an ERISA cause of action based on a denial of benefits accrues at the time the benefits are denied.); *Grosz-Salomon v. Paul Revere Life Ins. Co.*, 237 F. 3d 1154 (9th Cir. 2001).

6. The Plan specifically designates defendant as the Plan's claims administrator and Kodak has delegated to MetLife discretionary authority to determine Plaintiff's claim for benefits. *Madden v. ITT Long Term Disability Plan*, 914 F.2d 1279 (9th Cir. 1990).

7. The Plan documents, including the Group Insurance Certificate and the Summary Plan Description, unambiguously confer discretion upon MetLife to interpret the terms of the Plan and determine eligibility for benefits.

8. Moreover, even if the Plan language from the 1997 agreement, which allows the plan administrator to delegate to the claims administrator complete discretionary authority to construe the plans as to

eligibility for participation and benefits, was applicable to the Court's review, such language is sufficient to trigger a review for an abuse of discretion.

9. Where an ERISA plan vests the administrator with discretionary authority to determine benefit eligibility, the court may review the administrator's determination only for an abuse of discretion. *Taft v. Equitable Life Assurance Soc.*, 9 F.3d 1469, 1472 (9th Cir. 1994).

10. Defendant's benefit determination is subject to an abuse of discretion standard.

11. Where the insurer has discretionary authority to interpret and apply the terms of the plan, plaintiff must put forth material probative evidence, beyond the mere fact of an apparent conflict of interest, showing that the insurer's self-interest caused a breach of fiduciary obligations. *Alford v. DCH Found. Group Long-Term Disability Plan*, 311 F.3d 955, 959 (9th Cir. 2002); *Lang v. Long-Term Disability Plan Sponsor Applied Remote Tech. Inc.*, 125 F.3d 794, 797 (9th Cir. 1997); *Atwood v. Newmont Gold Co., Inc.*, 45 F.3d 1317, 1321 (9th Cir. 1995).

12. Here, there is no evidence of a serious conflict of interest sufficient to trigger a de novo review by this Court. *Lang*, 125 F.3d at 797.

13. Plaintiff has submitted documents outside the Administrative Record and asked the Court to supplement the Administrative Record. However, the Court's review is limited to the documents that were before defendant at the time it denied plaintiff's claim for benefits, and plaintiff is not permitted to supplement the Administrative Record. *Snow v.*

Standard Ins. Co., 87 F.3d 327, 332 (9th Cir. 1996); Taft, 9 F.3d at 1471; Kearney, 175 F.3d at 1084 (9th Cir. 1999).

14. Pursuant to the Supreme Court's decision in *Black & Decker v. Nord*, 123 S.Ct. 1965 (2003), the Court is not required to accord special deference to the opinion of Dr. Kramer, plaintiff's treating physician.

15. Defendant is not required to defer to the decisions of the Social Security Administration or rely on plaintiff's award of Social Security Disability Benefits in determining plaintiff's claim for disability benefits. See *Madden*, 914 F.2d at 1285; *Nord*, 123 S.Ct. 1965, 1971-72.

16. Vocational evidence (such as that in a hypothetical transferable skills analysis) is unnecessary when substantial medical evidence supports the conclusion that a plan participant is not disabled according to the terms of the plan. See e.g., *McKenzie v. Gen. Telephone Co. of Cal.*, 41 F.3d 1310, 1316 (9th Cir. 1994). In such cases, the district court need not remand for consideration of vocational evidence when a finding of no disability under the "any occupation" standard is supported by substantial evidence even absent vocational evidence.

17. Defendant's actions do not provide any basis upon which this Court could conclude that it abused its discretion when it denied plaintiff's claims.

18. Defendant's benefit determination, pursuant to which it discontinued payment of benefits to plaintiff, is upheld.

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III.

CONCLUSION

For the foregoing reasons the Court finds that defendant did not abuse its discretion when it denied plaintiff's long-term disability benefits.

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the Clerk shall serve a copy of this order on counsel for all parties in this action. The Clerk shall enter judgment for defendant.

DATED: April 9, 2004.

s/

ALICEMARIE H. STOTLER
UNITED STATES DISTRICT JUDGE